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## Torture Laid Bare

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## **Torture Laid Bare**

### Abstract

Torture, while internationally sanctioned, is not well-defined. This paper sets out a Minimal English definition of the crime of ‘torture’ in international law. The four elements of torture are: (1) infliction of severe pain and suffering (2) acting with intent (3) for a purpose (4) by the state. The connection between intention and outcome is considered in the light of presumptions. I then briefly consider the concept of ‘lawful sanctions’ and the UN Standard Minimum Rules that apply to the treatment of prisoners to establish a baseline against which allegations of torture can be measured. Finally, I argue that current regimes of British benefit sanctions, whereby social welfare payments are stopped, may in some cases constitute torture. This argument considers the effects of sanctions and the discourses and ideologies attached to social welfare claimants.

Keywords: torture, semantics, law, social welfare, benefits sanctions

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### **Introduction**

“There cannot be any doubt that torture is prohibited under international law” (Rouillard, 2005: 1). This is so well understood by states that although they may undertake actions that are in fact torture no state will try to defend these actions as ‘torture’ (Rothenberg, 2003: 49). What torture means, however, is not always clear. As Burchard observes, “‘Torture’ is a treacherous concept, because the habitual and intuitive name obfuscates the need for both definitional clarity and for definitional revisions...” (2008: 160). This is problematic, especially in relation to ‘new’ forms of torture as protection may be threatened by such vagueness (Harper, 2009: 912-3). In this paper, I consider the definition of ‘torture’ contained in the UN Convention Against Torture. In part 1, I provide an account of this definition by distilling its semantic core into Minimal English (Wierzbicka, 2014a). In part 2, I argue that benefits sanctions (the withdrawal of social welfare payments) in the United Kingdom constitute torture in some cases. Finally, I explain why such sanctions are not normally seen as torture.

### **Part 1**

#### **1. The torture texts**

There are a number of Treaties, Conventions, domestic and regional laws that forbid torture (see van der Vyver, 2003). Torture is considered so unacceptable that it is generally seen as

falling under *jus cogens* (a peremptory norm of international law from which no derogation is allowed; Burchard, 2008: 162; Harper, 2009: 894). It is prohibited by the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights (ICCPR), but the most detailed text is the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (CAT). Article 1 provides a definition of torture:

Article 1

1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions (UN, 1984).

Article 2 makes clear that the prohibition against torture is absolute and that it is not a defence for an individual to argue that they were ‘following orders’. Nor is it possible to suspend the protection even in cases of “exceptional circumstances ... whether a state of war or a threat of war, internal political instability or any other public emergency...” (UN, 1984). While cruel, inhuman and degrading treatment or punishment (CIDT) appears to be something less severe than torture (Article 16), the precise difference is not specified.

It is generally well settled that the four central features of torture are:

- Severe pain or suffering, whether physical or mental
- Intentional action
- There is a purpose for the torture (e.g. confession, punishment, discrimination)
- The action is carried out by the state or an agent of the state.

In order to be able to generate a definition in Minimal English (to be explained below), I deal with each element in turn. There are elements where a range of interpretations exist; however, because of the second aim of this paper, I frame the definition narrowly rather than broadly.

### 1.1 Severe Pain and Suffering

The relative intensity of pain and suffering inflicted is difficult to specify. What ‘severe’ means appears to depend on the context, the duration and the individual being subjected to punishment. The Committee Against Torture (which considers breaches of the CAT) has found the following all amount to torture:

(1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud music or prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats including death threats, (6) violent shaking, and (7) using cold air to chill (Hathaway, Nowlan and Spiegel, 2012: 827).

The list is not exhaustive and “some courts examine the *subjective* impact on the particular victim’s physical or mental disposition, including the vulnerability of children and pregnant women” (Harper, 2009: 902). This may even include “social and cultural conditions” (Harper, 2009: 903). It is clear that what counts as ‘severe’ is not limited to infliction of pain upon the body with physical instruments.

### 1.2 Purpose

The purpose for the action is also commonly thought to be a defining feature of torture, especially in distinguishing torture from CIDT. However, given that the CAT includes the clause “discrimination of any kind”, it seems that there need not be an instrumental reason for action to be ‘torture’, it may simply be gratuitous. Thus while Rodley argues for the importance of purpose in defining ‘torture’ (2002: 483), this is not a universal view (see Burchard, 2008: 170).

### 1.3 Intent

Intent is less straightforward. Along with purpose, intent is commonly understood as helping to distinguish between ‘torture’ and CIDT. But *what* is intended is at issue. Some suggest that the perpetrator has to intend to cause severe pain and suffering (Nowak, 2006: 830; Miller, 2005: 13). And while Hathaway, Nowlan and Spiegel argue for specific intent, they note that such intent can be inferred from the actions undertaken and the purpose of those actions. For example, they report that “the Committee [Against Torture] does not require direct evidence of intent; it instead infers mens rea [intention] based on the totality of the facts and circumstances” (Hathaway, Nowlan and Spiegel, 2012: 796). Indeed, in the ad hoc tribunals (dealing with war crimes and crimes against humanity), it appears to be enough to intend the act or omission that caused the severe pain and suffering (Burchard, 2008: 168; Nowak, 2006: 819).

### 1.4. Agent of the State

Finally, the CAT makes plain that the action must be performed by an agent of the state. In the explication below, I treat this requirement as relatively unproblematic as I orient to conditions in relatively stable nation states and stipulate that the person performing the action be somehow part of, or at least sanctioned by, the government.

There is a final point to note as the last sentence in Article 1 is problematic. In stipulating that ‘torture’ does not “include pain or suffering arising only from, inherent in or incidental to lawful sanctions”, it seems to undo all that went before. I return to this below after introducing Minimal English and providing a definition of ‘torture’ in these terms.

## **2. Minimal English**

Minimal English can be understood as an extension of Natural Semantic Metalanguage (NSM). NSM provides a metalanguage for semantic analysis that differs from systems which use “artificial symbols” that “have to be explained” (Wierzbicka, 1992: 17). Rather, NSM is a subset of natural language in the form of semantic primes (Wierzbicka, 2007: 19). Primes include: I, YOU, SOMEONE, PEOPLE, BODY, GOOD, BAD, HAPPEN, THINK, FEEL, WANT, VERY, BECAUSE, LIFE and DIE. Currently, there are around 60 primes (see Wierzbicka and Goddard, 2015) with two important properties. First, they are undecomposable into simpler components. They are the “unanalyzable elements of meaning which underlie a given language’s entire semantic system and which are the cornerstone of its entire lexicon” (Wierzbicka, 2009: 2). Second, NSM provides syntactic structures. The universality of both primes and syntax is empirically tested and thus subject to change; though the set is now reasonably stable. The primes together with the syntax constitute a mini, universal, natural language which can be used to produce semantic explications. Moreover, because the primes are universal, these explications are translatable into other languages (see Goddard, n.d).

Minimal English can be seen as building on NSM, allowing for terms that while not primitive and not always completely universal are nevertheless part of a ‘mini’ English. ‘Minimal

English' takes cognisance of the global reach of English while also acknowledging that English has its own cultural baggage (Wierzbicka and Goddard, 2015).

Minimal English is an English version of the common core of all (or nearly all) languages which has come to light through a decades-long program of cross-linguistic and intralinguistic investigations undertaken in the NSM approach to language and culture. It is a version of English cut to the bone, so that the only words and constructions left are those that match in meaning words and constructions in most, if not all, other languages (Wierzbicka and Goddard, 2015: 2)

To the extent that elements of this mini English do not find counterparts in other languages, translatability may be slightly affected. However, as Minimal English includes all the NSM primes it is still highly accessible cross-linguistically. Minimal English differs from NSM in that it perhaps more easily includes other universal or near universal 'semantic molecules'.

They are 'molecules' in that they can be decomposed into something more basic semantically. Some examples of molecules included are:

Body parts: Hands, head, face, legs, teeth, fingers, blood, tail, feathers

Biosocial: Be born, children, men, women, mother, father, wife, husband

Environmental: sun, sky, ground, fire, water

Everyday activities: eat, drink, sleep, sit, lie (Wierzbicka and Goddard, 2015)

In the explication of torture that follows, 'government' and 'country' are being used as semantic molecules.

As Minimal English is still developing, it is not yet possible to provide a definitive list of terms though it is estimated that there will be about 400 words (Wierzbicka and Goddard, 2015: 7). The list will be shaped by the uses that Minimal English is put to and the contexts in which it is used, always abiding by the guiding principle that it should aid communication and understanding without privileging the values and norms of any language or culture, including that of English. Wierzbicka and Goddard are not suggesting that it be an all-purpose lingua franca. But, there are clearly times (e.g. international political, legal and diplomatic discussions) when a thorough understanding of a particular concept could be incredibly valuable.

Objections raised to Minimal English are likely to be similar to those made in relation to NSM. Some scholars find the NSM approach untenable and may level similar critique at Minimal English (Geurts, 2003: 29). The reservations about what 'primitive' means (Koptjevskaja-Tamm and Ahlgren, 2003; Matthewson, 2003), questions around polysemy and whether all primes are in fact universal are less of an issue for Minimal English. However, whether the resulting explications really help explain concepts (Barker, 2003) and the complaint that resulting scripts are difficult to read are likely to persist.

There is no denying that explications in NSM and Minimal English are difficult to read. However, it is possible to understand them by reading and re-reading them. Certainly effort is required, but one need not learn a new language of symbols or technical terms. In that important sense, they are accessible. Moreover, if a term is worth analysing semantically, it is likely to be complex. The whole point of NSM and Minimal English is to articulate such complexity in a systematic and ultimately accessible way.

The goal of Minimal English is to increase understanding and precision, especially around complex yet widely used terms. "Minimal English is a tool that can help people put their thought into words in a way that makes them easier to discuss across a language barrier...Minimal English also helps one to think more clearly" (Wierzbicka and Goddard,

2015: 6). It does not have an advocacy agenda. While breaking with the core goals of Minimal English, it seems to me that in addition to language barriers, ideological barriers can also be overcome with Minimal English. That is, Minimal English allows us to think more clearly about the many factors that influence our understanding of our own culture.

### **3. ‘Torture’ in Minimal English**

The following account of torture seeks to capture the definition of ‘torture’ in the CAT taking into account the issues discussed above. The initial frame, ‘It can be like this’, is a standard frame for explications in the NSM tradition.

#### **“Torture” (As in “Convention Against Torture”)**

##### **It can be like this:**

1. Some people in one country are doing something to someone  
Because of this, someone feels something very very bad.  
like someone can feel something very very bad when something very very bad is happening to this someone's body.
2. [These people want to do this thing  
because they want this someone to do something  
these people know that this someone doesn't want to do it]
3. These people are people of one kind, people of this kind are part of something, some other people are part of this something.  
This something is above many people in this country, like a government is above many people in a country.
4. Because these people are doing this to this someone, this someone feels something very very bad.
5. This is very very bad
6. [When other people think about it, they can't not feel something very very bad because of this.]

Section 1 captures the doing of something to someone that makes them feel something very very bad. Note that the someone to whom the action is done need not be the same someone who feels something very very bad. A relative, spouse or friend may be subjected to pain or threats in order to make an individual do or feel something.

No distinction between mind and body is made in the explication. As torture can be both physical and mental, the very very bad feelings attach to any and all ‘parts’ of the person. The use of ‘feel’ captures all of these. These lines draw on Wierzbicka's lines for pain (2014b) which reference the body but don't depend on it, treating bodily pain as prototypical. While not all languages have a word for ‘pain’, most appear to have a term meaning “feeling something bad in one's body” (Wierzbicka, 2014b: 156). The reference to the body captures the prototypical understanding of torture without excluding less corporeal suffering.

Section 2 captures the intention to do the action and its purpose. While it is not clear to me that such a purpose is legally required, in order to satisfy the 'stricter' legal interpretations outlined above it is included. This purpose can be understood as analogous to punishment, in which the punisher wants someone to 'feel something bad' and so does something to the person (see Wierzbicka, 1996: 284). Punishment is certainly one 'purpose', but torture may also be used to 'encourage' a person to do something. Thus, I have included the line 'because they want this someone to do something'.

Section 3 captures the involvement of the government or something of that kind. Section 4 describes the very very bad feeling that the person has. Section 5 captures the very negative evaluation of torture as evidenced by the international ban. Section 6 is perhaps optional though it too is intended to capture the force of international condemnation. The potential problem with section 6 is that the torturing actor may not in fact feel something very bad. Other people too may not feel something very bad, especially if the victim is from a minority already discriminated against and dehumanised (see Stanley, 2005: 585; Stollznaw, 2008). Thus the bracketed inclusions in the explication are set in this way as while they may be prototypical, it is not clear that they are part of the conceptual core of the legal definition of torture.

This definition may fail to capture what people generally think of as illegal 'torture'. I return to this issue below and suggest that the conception that native speakers have of the legally prohibited act of 'torture' is attached to particular prototypes. These prototypes may exemplify but do not exhaust the legal definition of 'torture'. The minimal English explication is important exactly because of the existence of these prototypes as it provides a more neutral and objective account of the legal definition of torture.

### 3.1 (Mis)translation

One might argue that rather than being neutral and objective, in the move from CAT to Minimal English something is lost. Such an argument relies on the fact that legal language really is a different language (Wolcher, 2006). Special care does need to be taken in any move out of legal language in order to preserve legal content (Tiersma, 2001), but the torture texts rather reverse the problem. Apart from its syntactic structure, the definition of torture in CAT shows little evidence of legalese. Indeed, Luban and Shue (2011) argue that the incorporation of the prohibition into US domestic law distorted and narrowed the meaning of the original text (2011: 825). The case of torture, outlawed as it is in international law, thus provides an unusual text, not originally tied to the specifics of any legal system but applicable to them all. Further, as noted in section 1, the problem often identified with the originating texts is not that they are too specific or legalistic, but rather than they leave too much room for (mis)interpretation. By focussing on the common sense understanding of the origin text (a standard legal interpretative convention) it is possible to make explicit what may otherwise be erased.

### 3.2 Some notes on 'intention'

Intention is clearly important. As stated above, the intention in torture seems to be about performing an action. Because of the way intention is assessed, it is not necessary to establish the real state of someone's mind. The link between the action and the suffering, then, must be obvious in some way. What is relevant can be put as follows: what would a 'reasonable person' think would happen to another person should they be subjected to a particular action

(Luban and Shue, 2011: 852)? In legal terms, it is possible to make this causal connection in terms of ‘presumptions’.

In their survey of presumptions in various jurisdictions, Franck and Prows write “A presumption stipulates that if one fact (or the commission, or omission, of an act) can be demonstrated, then another may (or must) be inferred from it” (2005: 200). In short, the connection between actions and effect on an individual is here a question of ‘common sense’ (Franck and Prows, 2005: 197).

At one level, presumptions occupy a rather obscure niche in the law of evidence. At another, they are an important part of a profound debate about the nature and origins of our perceptions of reality: our ways of seeing, and reasoning about, the external world. Obviously, this cultural aspect of the matter is of importance to judges, lawyers, and, indeed, everyone (Frank and Prows, 2005: 200).

I want to show that the above definition of torture allows us to see other actions, which don’t normally attract the ‘special stigma’ that more prototypical acts of torture do, as torture (Klayman. 1978: 498, 505). Before this, it is necessary to deal with the question of lawful sanctions as this provides us with a clear, minimum level of treatment that acts as a boundary separating legal punishment from torture.

## **Part 2**

### **4. Lawful sanctions and Minimum Rules**

The definition of torture in the CAT concludes:

It [torture] does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Ingelse writes, “It goes without saying that the second sentence of article 1. par 1. is a monstrosity” (2001: 216), nevertheless, for what follows it is important to deal with it.

There must be a line between ‘acceptable’ lawful sanctions and those which would constitute torture. As Miller notes, the ‘legal sanctions’ exemption was not originally part of the Convention, but was added because a suggested reference to the ‘Standard Minimum Rules for the Treatment of Prisoners’ (SMR) as a statement of minimum levels of good treatment was not included in the final Convention (2005: 21). But the SMR can be brought back in as a line not to be crossed. In 1997 the then UN Special Rapporteur on torture explicitly mentioned the SMR when discussing the lawful sanctions question thus suggesting they can be treated as an international custom or convention (Rodley 1997 pgh 8). I highlight only specific parts of the SMR here (UN 1977) drawing attention to requirements that are relevant to the next section of this paper.

The SMR require for prisoners that accommodation, “in particular all sleeping accommodation shall meet all requirements of health...” (UN, 1977: pgh 10). Bathing facilities should be provided at an appropriate temperature and frequency. Prisoners shall be provided “with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served” (UN, 1977: pgh 20). There shall be no punishment except in accordance with the law, and always requiring that the prisoner be informed of the allegation and being provided a chance to present a defence (UN, 1977: pgh 30). Finally, prisoners should also be allowed to communicate with friends and family, through visits and correspondence (UN, 1977: pgh 37).



It is of course correct that detainees should be treated with humanity. None of this is at issue (at least in theory) for prisoners. In the next section, I suggest that these are real issues for citizens subject to benefit sanctions in the UK.

### **5. Are benefit sanctions torture?**

In 2012, new sanctions were introduced for Job Seekers Allowance (JSA; in October). ‘Sanction’ here refers to a practice by which all or some of an individual’s social welfare payment is stopped. In order for recipients of JSA to avoid benefit sanctions the individual must “do all [he/she] can to find work”, attend all meetings with the ‘work coach’ (a government employee), apply for jobs, take part in employment schemes and do everything specified by the ‘work coach’ (DWP 2014). The details of what is required are set out in writing (in a Claimant Commitment) or may be communicated verbally by the work coach. Should one not do all of this, sanctions may be used (DWP 2014). Sanctions are applied at various levels, and last between 4 weeks and three years depending on the level of breach and whether the breach is new or ongoing (DWP 2014).

Sanctions are not rare. Wintour (2014) reports that between April 2013 and March 2014 “More than 900,000 jobseeker’s allowance (JSA) claimants have been subject to a benefit sanction decision”. Changes in 2012 also mean that there is limited time for an individual to present evidence against a sanction. Such evidence may include providing ‘a good reason’ for not attending a meeting. This change in timing was implemented “to ensure that claimants see the consequences of their actions or inactions sooner, the new rules enable DMs [Decision Makers] to impose sanctions at a time closer to the offence” (DWP 2013).

Claimants have been sanctioned for: failing to sign on with their work coach even though they were attending recommended training (Brown, 2013); attending a funeral and so not signing on (Twigg, 2013); and not looking for work because the individual was waiting for a secured job to begin (Khan, 2015, in this case the job was with the DWP; for examples of the various reasons for sanctions, see Work and Pensions Committee, 2015 written submissions, DWP unspun 2014; Lansley and Mack, 2015: 127). The harshness of these rules and of sanctions more generally has not gone unnoticed. Webster argues that benefit sanctions constitute a ‘secret penal system’, one “which is more severe than the mainstream judicial system, but lacks its safeguards” (2015).

There are two points to raise here. First, sanctions are clearly a form of punishment. While they are apparently designed to ‘encourage’ claimants to abide by the conditions set out in their Claimant Commitment they are clearly penalties for not having done so. Second, it does not seem to be the case that individuals are actually able to provide information necessary for a reasonable determination of their case in a timely manner. If claimants are not aware that they are going to be sanctioned, it is impossible for them to provide an explanation. Indeed, an often found narrative is that claimants first know of their sanction when they are unable to access money from a cash machine (e.g. Church Action on Poverty, 2015: 25). In this way, benefit claimants are subject to treatment inferior to that which prisoners receive under the SMR.

In order to identify the situations in which sanctions constitute torture, is important to examine the consequences of sanctions. Benefit sanctions stop the payment of social welfare. While individuals should continue to receive housing benefit, they will have no income for the duration of the sanction. For many in receipt of JSA, it is unlikely they will have savings or pantries stocked with food. Heating, travel and communication (internet and phone) will

also be difficult if not impossible. The lack of money may mean that the ability to search for jobs or make applications (by internet and phone) is limited, thus putting individuals at further risk of sanctions for not meeting the terms of their Claimant Commitments (which they must do, even while sanctioned).<sup>i</sup> Lansley and Mack note

The average duration of the sanction was eight weeks, with two-thirds of respondents left with no income at all after the sanction was imposed, so that those without outside help were effectively destitute, unable to buy food, pay fuel bills or [128] bus fares, or pay for phone calls (2015: 127-8)

Such evidence from individuals is on record. The following is an extract from a written submission to the House of Commons Work and Pensions Committee:

On the first occasion I cancelled a Jobcentre appointment to go to a job interview. It was short notice however I phoned the Jobcentre to inform them and was assured on the phone that it was ok. I was sanctioned two weeks JSA. I appealed this and was found to be in the right and the money was paid to me, which was great, but in the interim I had to go 2 weeks without a penny to my name. I missed other job interviews because I had no money for transport and went without food, electric and heating for some of that time. It was a cruel punishment issued arbitrarily, had a negative impact on my jobseeking and diminished my respect for the benefit system massively (Work and Pensions Committee, 2015; written submission SAN0029).

Another submission to the same Committee is even starker.

I am Gillian Thompson the sister of the late David George Clapson, and submit evidence on his unnecessary and untimely death.

My brother David was found dead in his flat on 20th July 2013, he died alone, penniless and starving he was just 59.

The Coroner's Report stated there was no food his stomach.

His money had been stopped a month before he died for failing to attend an appointment and by the 8<sup>th</sup> July he had just £3.44 in his bank (you need at least £5 to draw money out).

His electric key had run out and could not chill his insulin and there was no food in the flat (Work and Pensions Committee, 2015; written submission SAN0047)

I do not want to suggest that benefit sanctions will always constitute torture. But if (A) a person has no savings/money, (B) has no other means to meet basic needs (e.g. family help) and (C) the sanction is eight weeks or longer, a reasonable case could be made that the sanction constitutes torture. Given what is involved in claiming JSA, these conditions should not be difficult to establish administratively. Further, no sanction should be imposed if an individual is appealing a sanction decision. Together, these requirements simply ensure that benefit claimants are not placed in a worse situation than prisoners.

In relation to the elements of torture specified in section 2, it is clear that someone in government has done something (DWP applying sanctions; elements 1 and 3). It is also clear that benefits sanctions are a punishment (element 2) The feeling of something very very bad is a common-sense presumption from the lack of resources and the conditions (A-C) outlined (elements 1 and 5). Severe lack of financial resources in contemporary Britain will result in hunger, lack of heat and electricity and loss of communication. Under the three conditions (A-C), a sanction of is highly likely to result in a person feeling something very very bad. As shown above, the intention in torture need not be one of causing pain. It need only be an intention to undertake a particular action. The relevant action here is stopping JSA payments, which is clearly intentional (element 1).

It is possible to argue that charities and family should step in the case of sanctions. This is relevant not only to identifying cases of torture, but also in establishing causation. If people could turn to family, they doubtless will (as testimony indicates, Work and Pensions Committee, 2015). But this is not always possible. Distance, estrangement and the means of relatives are all considerations; these could be checked under (B) above. And while charities provide important protection against the worst effects of poverty, but they cannot completely address extreme lack. It might also be suggested that such sanctioned individuals could beg on the streets. This is certainly an option. How this would be possible while continuing to seek work and thus avoid further sanctions is not clear. In any case, it seems that being able to seek charitable assistance or raise funds through begging at best turns what would otherwise be torture into cruel, inhuman or degrading treatment or punishment. Should the three conditions (A-C) set out above be met, the resulting pain and suffering is both likely to constitute torture and to be directly related to the sanction. The pain and suffering caused by the complete lack of resources while having to continue to seek work is foreseeable when the three conditions have been met and would not have occurred but for the sanction.

Finally, given the absolute prohibition of torture, it seems reasonable to err on the side of caution when setting up administrative procedures. If any instance of benefit sanction constitutes torture, then the safest action (and most compliant with international law) would be to avoid sanctions altogether. Article 2 (1) of the CAT states:

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

The obligation is preventative, as it is for cruel, inhuman or degrading treatment or punishment (Article 16(1)). Thus, the Convention obligations are not simply to prosecute torture but also to prevent both torture and CIDT.

## **6. Invisible torture**

I realise that it is difficult to see benefit sanctions as ‘torture’. There are at least two reasons for this. First, torture is not well understood, even in legal domains. Second, we are encouraged to see JSA claimants as deserving of their punishment and thus not to see their treatment as torture.

The CAT defines torture as an act which causes “severe pain or suffering, whether physical or mental”. Generally, however,

...the only scenario that we have in mind when we speak of torture is that of an evil state agent (torturer), locking a cuffed suspect in an interrogation room, deep in a dark basement while a single light is swaying above his head, and subjecting the suspect to extreme and severe pain and suffering (Saif-Alden Wattad, 2008: 1; see also Klayman, 1978: 498).

We also expect there to be visible physical evidence of the torture (Rejali, 2009: 2). But torture often leaves no physical trace, as Rejali shows in his documentation of the history and range of ‘clean torture’ methods (2009). Moreover, there are other forms that torture takes. Schechter argues for the recognition of starvation as torture (2003), Cuniffe (2013) makes the case that psychological torture is not adequately legally recognised and Luban and Shue (2011) detail various forms of mental pain and suffering that should also be recognised as torture. In short, legal scholars argue that the ‘torture’ judicially recognised at present fails to capture the range of human pain and suffering that international law prohibits. From the very beginning of the legal prohibition of torture it has been acknowledged that the infliction of severe physical or mental suffering can take many forms (Klayman, 1978). But political

expedience and perhaps the desire for nations not to be seen as torturing their own citizens has polarised our prototypes such that we are more focused on physical pain that leaves visible marks than on the full range of pain and suffering.

Our conception of torture is also tied to our conception of the person being subjected to 'torture'. That we do not recognise actions as torture which would otherwise satisfy the legal definition of torture is perhaps due to the power of discourse to render some events invisible and some people inconsequential. As Viterbo argues, "State torture is embedded in a certain representational economy" (2014: 290). Thus there is a further strand to consider that brings together dominant discourses around benefit claimants, our individual social position and perhaps our unconscious understanding of how punishing sanctions really are.

Successive governments in the UK have sought to highlight the cost of welfare spending and to focus particularly on so-called 'scroungers'. This is a discourse with a long history, reaching back to the distinction between the 'deserving' and 'undeserving' poor and constantly refreshed by both media coverage and government rhetoric (Garthwaite, 2011; Lansley and Mack, 2015, 121ff; Shildrick and MacDonald, 2013). Despite figures showing that nearly half of the welfare spend is to cover pensions for the elderly (e.g. Rogers, 2013), there is a pervasive idea that there is a large group of people taking advantage of the benefits system and making a 'lifestyle' choice to remain on benefits rather than work. There is little evidence to support this (Lansley and Mack, 2015: 147-8). Nevertheless, the discourse of the benefit scrounger may work as an ideological veil or filter contributing to a perception of sanctions as 'fair treatment'.

Everyone 'knows' that it is not a good thing to be claiming social welfare payments. Indeed, the demonization of benefits claimants is newly visible in so-called 'poverty porn' (see Biressi, 2011; Jensen, 2014; Paterson, Coffey-Glover and Peplow, 2016). This 'genre' has been defined as "the media portrayal of the feral and feckless poor as the source of social breakdown" (Squires and Lea, 2013: 12 cited in Paterson, Coffey-Glover and Peplow, 2016: 197). Paterson, Coffey-Glover and Peplow (2016) outline the negative stereotypes that attach to benefit claimants (see also Jensen, 2014: 1.1). They also demonstrate the separation that viewers of poverty porn make between themselves and the people depicted (Paterson, Coffey-Glover and Peplow, 2016). Moreover, as poverty porn focusses on "individual failures and deficiencies" it decontextualizes poverty and erases social and structural causes (Hancock and Mooney, 2013: 111). In this way, poverty porn "performs an ideological function; it generates a new 'commonsense' around an unquestionable need for welfare reform; it makes a neoliberal welfare 'doxa'" (Jensen, 2014: 2.2).

Together with the view that people are only on social welfare because of their own character and lack of initiative, poverty porn serves as a potent warning to the remainder of the population. The portrayal of 'othered' individuals is a constant reminder of the life we will be forced to live and the way we will be publicly regarded if we too are found to lack the personal qualities necessary to 'succeed' (see Jensen, 2014: 2.7). This is clearly a form of 'moral tutelage' that functions as a "warning" (Hancock and Mooney, 2013: 117). Recipients of social welfare are stigmatised for receiving benefits, sanctioned when they do not behave as they are supposed to, and, in 'poverty porn' used to send a potent and political message (see Rothenberg, 2003). If we are not good enough, if we do not work hard enough, we too may find ourselves on benefits and subject to the same life and treatment.

## **7. Conclusion**

The international law definition of ‘torture’ has been clarified by explicating it with Minimal English. Phrased in this way, it should be easier to recognise acts of torture when they take place. However, as the case of benefits sanctions show, torture and other actions are always embedded in a representational and political economy, one which may make it difficult to recognise human suffering even as we are presented with it and especially if it differs from prototypical images of torture. Under the three conditions outlined, the removal of someone’s benefits may constitute torture or at least cruel, inhuman or degrading treatment and punishment as defined in international law. It is intentional, it results in something very very bad happening to a person’s mind and body and it is done by the state. We do not see it as torture, however, because our prototypical images of torture do not admit the kinds of pain that benefits sanctions inflict and because we have been primed to see individuals on welfare as deserving of their marginalised state.

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<sup>i</sup> It is possible to apply for hardship funds (DWP 2014). The amount is 60% of JSA and unless a person or their dependents are vulnerable, there is a two week waiting period (Money Advice Service, 2015). A person only qualifies for hardship payments if all their JSA has been cut and they can demonstrate it is impossible to get money from elsewhere or pay for essentials (Money Advice Service, 2015).



# Torture Laid Bare

## Abstract

Torture, while internationally sanctioned, is not well-defined. This paper sets out a Minimal English definition of the crime of ‘torture’ in international law. The four elements of torture are: (1) infliction of severe pain and suffering (2) acting with intent (3) for a purpose (4) by the state. The connection between intention and outcome is considered in the light of presumptions. I then briefly consider the concept of ‘lawful sanctions’ and the UN Standard Minimum Rules that apply to the treatment of prisoners to establish a baseline against which allegations of torture can be measured. Finally, I argue that current regimes of British benefit sanctions, whereby social welfare payments are stopped, may in some cases constitute torture. This argument considers the effects of sanctions and the discourses and ideologies attached to social welfare claimants.

Keywords: torture, semantics, law, social welfare, benefits sanctions

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## Introduction

“There cannot be any doubt that torture is prohibited under international law” (Rouillard, 2005: 1). This is so well understood by states that although they may undertake actions that are in fact torture no state will try to defend these actions as ‘torture’ (Rothenberg, 2003: 49). What torture means, however, is not always clear. As Burchard observes, “‘Torture’ is a treacherous concept, because the habitual and intuitive name obfuscates the need for both definitional clarity and for definitional revisions...” (2008: 160). This is problematic, especially in relation to ‘new’ forms of torture as protection may be threatened by such vagueness (Harper, 2009: 912-3). In this paper, I consider the definition of ‘torture’ contained in the UN Convention Against Torture. In part 1, I provide an account of this definition by distilling its semantic core into Minimal English (Wierzbicka, 2014a). In part 2, I argue that benefits sanctions (the withdrawal of social welfare payments) in the United Kingdom constitute torture in some cases. Finally, I explain why such sanctions are not normally seen as torture.

## Part 1

### 1. The torture texts

There are a number of Treaties, Conventions, domestic and regional laws that forbid torture (see van der Vyver, 2003). Torture is considered so unacceptable that it is generally seen as

falling under *jus cogens* (a peremptory norm of international law from which no derogation is allowed; Burchard, 2008: 162; Harper, 2009: 894). It is prohibited by the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights (ICCPR), but the most detailed text is the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (CAT). Article 1 provides a definition of torture:

#### Article 1

1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions (UN, 1984).

Article 2 makes clear that the prohibition against torture is absolute and that it is not a defence for an individual to argue that they were ‘following orders’. Nor is it possible to suspend the protection even in cases of “exceptional circumstances ... whether a state of war or a threat of war, internal political instability or any other public emergency...” (UN, 1984). While cruel, inhuman and degrading treatment or punishment (CIDT) appears to be something less severe than torture (Article 16), the precise difference is not specified.

It is generally well settled that the four central features of torture are:

- Severe pain or suffering, whether physical or mental
- Intentional action
- There is a purpose for the torture (e.g. confession, punishment, discrimination)
- The action is carried out by the state or an agent of the state.

In order to be able to generate a definition in Minimal English (to be explained below), I deal with each element in turn. There are elements where a range of interpretations exist; however, because of the second aim of this paper, I frame the definition narrowly rather than broadly.

#### 1.1 Severe Pain and Suffering

The relative intensity of pain and suffering inflicted is difficult to specify. What ‘severe’ means appears to depend on the context, the duration and the individual being subjected to punishment. The Committee Against Torture (which considers breaches of the CAT) has found the following all amount to torture:

(1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud music or prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats including death threats, (6) violent shaking, and (7) using cold air to chill (Hathaway, Nowlan and Spiegel, 2012: 827).

The list is not exhaustive and “some courts examine the *subjective* impact on the particular victim’s physical or mental disposition, including the vulnerability of children and pregnant women” (Harper, 2009: 902). This may even include “social and cultural conditions” (Harper, 2009: 903). It is clear that what counts as ‘severe’ is not limited to infliction of pain upon the body with physical instruments.

#### 1.2 Purpose

1 The purpose for the action is also commonly thought to be a defining feature of torture,  
2 especially in distinguishing torture from CIDT. However, given that the CAT includes the  
3 clause “discrimination of any kind”, it seems that there need not be an instrumental reason for  
4 action to be ‘torture’, it may simply be gratuitous. Thus while Rodley argues for the  
5 importance of purpose in defining ‘torture’ (2002: 483), this is not a universal view (see  
6 Burchard, 2008: 170).

### 8 1.3 Intent

9 Intent is less straightforward. Along with purpose, intent is commonly understood as helping  
10 to distinguish between ‘torture’ and CIDT. But *what* is intended is at issue. Some suggest that  
11 the perpetrator has to intend to cause severe pain and suffering (Nowak, 2006: 830; Miller,  
12 2005: 13). And while Hathaway, Nowlan and Spiegel argue for specific intent, they note that  
13 such intent can be inferred from the actions undertaken and the purpose of those actions. For  
14 example, they report that “the Committee [Against Torture] does not require direct evidence  
15 of intent; it instead infers mens rea [intention] based on the totality of the facts and  
16 circumstances” (Hathaway, Nowlan and Spiegel, 2012: 796). Indeed, in the ad hoc tribunals  
17 (dealing with war crimes and crimes against humanity), it appears to be enough to intend the  
18 act or omission that caused the severe pain and suffering (Burchard, 2008: 168; Nowak,  
19 2006: 819).

### 24 1.4. Agent of the State

25 Finally, the CAT makes plain that the action must be performed by an agent of the state. In  
26 the explication below, I treat this requirement as relatively unproblematic as I orient to  
27 conditions in relatively stable nation states and stipulate that the person performing the action  
28 be somehow part of, or at least sanctioned by, the government.

31 There is a final point to note as the last sentence in Article 1 is problematic. In stipulating that  
32 ‘torture’ does not “include pain or suffering arising only from, inherent in or incidental to  
33 lawful sanctions”, it seems to undo all that went before. I return to this below after  
34 introducing Minimal English and providing a definition of ‘torture’ in these terms.

## 37 **2. Minimal English**

38 Minimal English can be understood as an extension of Natural Semantic Metalanguage  
39 (NSM). NSM provides a metalanguage for semantic analysis that differs from systems which  
40 use “artificial symbols” that “have to be explained” (Wierzbicka, 1992: 17). Rather, NSM is a  
41 subset of natural language in the form of semantic primes (Wierzbicka, 2007: 19). Primes  
42 include: I, YOU, SOMEONE, PEOPLE, BODY, GOOD, BAD, HAPPEN, THINK, FEEL, WANT, VERY,  
43 BECAUSE, LIFE and DIE. Currently, there are around 60 primes (see Wierzbicka and Goddard,  
44 2015) with two important properties. First, they are undecomposable into simpler  
45 components. They are the “unanalyzable elements of meaning which underlie a given  
46 language’s entire semantic system and which are the cornerstone of its entire lexicon”  
47 (Wierzbicka, 2009: 2). Second, NSM provides syntactic structures. The universality of both  
48 primes and syntax is empirically tested and thus subject to change; though the set is now  
49 reasonably stable. The primes together with the syntax constitute a mini, universal, natural  
50 language which can be used to produce semantic explications. Moreover, because the primes  
51 are universal, these explications are translatable into other languages (see Goddard, n.d).

52 Minimal English can be seen as building on NSM, allowing for terms that while not primitive  
53 and not always completely universal are nevertheless part of a ‘mini’ English. ‘Minimal

English' takes cognisance of the global reach of English while also acknowledging that English has its own cultural baggage (Wierzbicka and Goddard, 2015).

Minimal English is an English version of the common core of all (or nearly all) languages which has come to light through a decades-long program of cross-linguistic and intralinguistic investigations undertaken in the NSM approach to language and culture. It is a version of English cut to the bone, so that the only words and constructions left are those that match in meaning words and constructions in most, if not all, other languages (Wierzbicka and Goddard, 2015: 2)

To the extent that elements of this mini English do not find counterparts in other languages, translatability may be slightly affected. However, as Minimal English includes all the NSM primes it is still highly accessible cross-linguistically. Minimal English differs from NSM in that it perhaps more easily includes other universal or near universal 'semantic molecules'. They are 'molecules' in that they can be decomposed into something more basic semantically. Some examples of molecules included are:

Body parts: Hands, head, face, legs, teeth, fingers, blood, tail, feathers

Biosocial: Be born, children, men, women, mother, father, wife, husband

Environmental: sun, sky, ground, fire, water

Everyday activities: eat, drink, sleep, sit, lie (Wierzbicka and Goddard, 2015)

In the explication of torture that follows, 'government' and 'country' are being used as semantic molecules.

As Minimal English is still developing, it is not yet possible to provide a definitive list of terms though it is estimated that there will be about 400 words (Wierzbicka and Goddard, 2015: 7). The list will be shaped by the uses that Minimal English is put to and the contexts in which it is used, always abiding by the guiding principle that it should aid communication and understanding without privileging the values and norms of any language or culture, including that of English. Wierzbicka and Goddard are not suggesting that it be an all-purpose lingua franca. But, there are clearly times (e.g. international political, legal and diplomatic discussions) when a thorough understanding of a particular concept could be incredibly valuable.

Objections raised to Minimal English are likely to be similar to those made in relation to NSM. Some scholars find the NSM approach untenable and may level similar critique at Minimal English (Geurts, 2003: 29). The reservations about what 'primitive' means (Koptjevskaja-Tamm and Ahlgren, 2003; Matthewson, 2003), questions around polysemy and whether all primes are in fact universal are less of an issue for Minimal English. However, whether the resulting explications really help explain concepts (Barker, 2003) and the complaint that resulting scripts are difficult to read are likely to persist.

There is no denying that explications in NSM and Minimal English are difficult to read. However, it is possible to understand them by reading and re-reading them. Certainly effort is required, but one need not learn a new language of symbols or technical terms. In that important sense, they are accessible. Moreover, if a term is worth analysing semantically, it is likely to be complex. The whole point of NSM and Minimal English is to articulate such complexity in a systematic and ultimately accessible way.

The goal of Minimal English is to increase understanding and precision, especially around complex yet widely used terms. "Minimal English is a tool that can help people put their thought into words in a way that makes them easier to discuss across a language barrier...Minimal English also helps one to think more clearly" (Wierzbicka and Goddard,

2015: 6). It does not have an advocacy agenda. While breaking with the core goals of Minimal English, it seems to me that in addition to language barriers, ideological barriers can also be overcome with Minimal English. That is, Minimal English allows us to think more clearly about the many factors that influence our understanding of our own culture.

### 3. 'Torture' in Minimal English

The following account of torture seeks to capture the definition of 'torture' in the CAT taking into account the issues discussed above. The initial frame, 'It can be like this', is a standard frame for explications in the NSM tradition.

#### **"Torture" (As in "Convention Against Torture")**

##### **It can be like this:**

1. Some people in one country are doing something to someone  
Because of this, someone feels something very very bad.  
like someone can feel something very very bad when something very very bad is happening to this someone's body.
2. [These people want to do this thing  
because they want this someone to do something  
these people know that this someone doesn't want to do it]
3. These people are people of one kind, people of this kind are part of something, some other people are part of this something.  
This something is above many people in this country, like a government is above many people in a country.
4. Because these people are doing this to this someone, this someone feels something very very bad.
5. This is very very bad
6. [When other people think about it, they can't not feel something very very bad because of this.]

Section 1 captures the doing of something to someone that makes them feel something very very bad. Note that the someone to whom the action is done need not be the same someone who feels something very very bad. A relative, spouse or friend may be subjected to pain or threats in order to make an individual do or feel something.

No distinction between mind and body is made in the explication. As torture can be both physical and mental, the very very bad feelings attach to any and all 'parts' of the person. The use of 'feel' captures all of these. These lines draw on Wierzbicka's lines for pain (2014b) which reference the body but don't depend on it, treating bodily pain as prototypical. While not all languages have a word for 'pain', most appear to have a term meaning "feeling something bad in one's body" (Wierzbicka, 2014b: 156). The reference to the body captures the prototypical understanding of torture without excluding less corporeal suffering.

1 Section 2 captures the intention to do the action and its purpose. While it is not clear to me  
2 that such a purpose is legally required, in order to satisfy the 'stricter' legal interpretations  
3 outlined above it is included. This purpose can be understood as analogous to punishment, in  
4 which the punisher wants someone to 'feel something bad' and so does something to the  
5 person (see Wierzbicka, 1996: 284). Punishment is certainly one 'purpose', but torture may  
6 also be used to 'encourage' a person to do something. Thus, I have included the line 'because  
7 they want this someone to do something'.  
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11 Section 3 captures the involvement of the government or something of that kind. Section 4  
12 describes the very very bad feeling that the person has. Section 5 captures the very negative  
13 evaluation of torture as evidenced by the international ban. Section 6 is perhaps optional  
14 though it too is intended to capture the force of international condemnation. The potential  
15 problem with section 6 is that the torturing actor may not in fact feel something very bad.  
16 Other people too may not feel something very bad, especially if the victim is from a minority  
17 already discriminated against and dehumanised (see Stanley, 2005: 585; Stollznnow, 2008).  
18 Thus the bracketed inclusions in the explication are set in this way as while they may be  
19 prototypical, it is not clear that they are part of the conceptual core of the legal definition of  
20 torture.  
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24 This definition may fail to capture what people generally think of as illegal 'torture'. I return  
25 to this issue below and suggest that the conception that native speakers have of the legally  
26 prohibited act of 'torture' is attached to particular prototypes. These prototypes may  
27 exemplify but do not exhaust the legal definition of 'torture'. The minimal English  
28 explication is important exactly because of the existence of these prototypes as it provides a  
29 more neutral and objective account of the legal definition of torture.  
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### 33 3.1 (Mis)translation

34 One might argue that rather than being neutral and objective, in the move from CAT to  
35 Minimal English something is lost. Such an argument relies on the fact that legal language  
36 really is a different language (Wolcher, 2006). Special care does need to be taken in any  
37 move out of legal language in order to preserve legal content (Tiersma, 2001), but the torture  
38 texts rather reverse the problem. Apart from its syntactic structure, the definition of torture in  
39 CAT shows little evidence of legalese. Indeed, Luban and Shue (2011) argue that the  
40 incorporation of the prohibition into US domestic law distorted and narrowed the meaning of  
41 the original text (2011: 825). The case of torture, outlawed as it is in international law, thus  
42 provides an unusual text, not originally tied to the specifics of any legal system but applicable  
43 to them all. Further, as noted in section 1, the problem often identified with the originating  
44 texts is not that they are too specific or legalistic, but rather than they leave too much room  
45 for (mis)interpretation. By focussing on the common sense understanding of the origin text (a  
46 standard legal interpretative convention) it is possible to make explicit what may otherwise  
47 be erased.  
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### 52 3.2 Some notes on 'intention'

53 Intention is clearly important. As stated above, the intention in torture seems to be about  
54 performing an action. Because of the way intention is assessed, it is not necessary to establish  
55 the real state of someone's mind. The link between the action and the suffering, then, must be  
56 obvious in some way. What is relevant can be put as follows: what would a 'reasonable  
57 person' think would happen to another person should they be subjected to a particular action  
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(Luban and Shue, 2011: 852)? In legal terms, it is possible to make this causal connection in terms of ‘presumptions’.

In their survey of presumptions in various jurisdictions, Franck and Prows write “A presumption stipulates that if one fact (or the commission, or omission, of an act) can be demonstrated, then another may (or must) be inferred from it” (2005: 200). In short, the connection between actions and effect on an individual is here a question of ‘common sense’ (Franck and Prows, 2005: 197).

At one level, presumptions occupy a rather obscure niche in the law of evidence. At another, they are an important part of a profound debate about the nature and origins of our perceptions of reality: our ways of seeing, and reasoning about, the external world. Obviously, this cultural aspect of the matter is of importance to judges, lawyers, and, indeed, everyone (Frank and Prows, 2005: 200).

I want to show that the above definition of torture allows us to see other actions, which don’t normally attract the ‘special stigma’ that more prototypical acts of torture do, as torture (Klayman. 1978: 498, 505). Before this, it is necessary to deal with the question of lawful sanctions as this provides us with a clear, minimum level of treatment that acts as a boundary separating legal punishment from torture.

## **Part 2**

### **4. Lawful sanctions and Minimum Rules**

The definition of torture in the CAT concludes:

It [torture] does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Ingelse writes, “It goes without saying that the second sentence of article 1. par 1. is a monstrosity” (2001: 216), nevertheless, for what follows it is important to deal with it.

There must be a line between ‘acceptable’ lawful sanctions and those which would constitute torture. As Miller notes, the ‘legal sanctions’ exemption was not originally part of the Convention, but was added because a suggested reference to the ‘Standard Minimum Rules for the Treatment of Prisoners’ (SMR) as a statement of minimum levels of good treatment was not included in the final Convention (2005: 21). But the SMR can be brought back in as a line not to be crossed. In 1997 the then UN Special Rapporteur on torture explicitly mentioned the SMR when discussing the lawful sanctions question thus suggesting they can be treated as an international custom or convention (Rodley 1997 pgh 8). I highlight only specific parts of the SMR here (UN 1977) drawing attention to requirements that are relevant to the next section of this paper.

The SMR require for prisoners that accommodation, “in particular all sleeping accommodation shall meet all requirements of health...” (UN, 1977: pgh 10). Bathing facilities should be provided at an appropriate temperature and frequency. Prisoners shall be provided “with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served” (UN, 1977: pgh 20). There shall be no punishment except in accordance with the law, and always requiring that the prisoner be informed of the allegation and being provided a chance to present a defence (UN, 1977: pgh 30). Finally, prisoners should also be allowed to communicate with friends and family, through visits and correspondence (UN, 1977: pgh 37).

1 It is of course correct that detainees should be treated with humanity. None of this is at issue  
2 (at least in theory) for prisoners. In the next section, I suggest that these are real issues for  
3 citizens subject to benefit sanctions in the UK.

#### 4 5 **5. Are benefit sanctions torture?**

6 In 2012, new sanctions were introduced for Job Seekers Allowance (JSA; in October).  
7 ‘Sanction’ here refers to a practice by which all or some of an individual’s social welfare  
8 payment is stopped. In order for recipients of JSA to avoid benefit sanctions the individual  
9 must “do all [he/she] can to find work”, attend all meetings with the ‘work coach’ (a  
10 government employee), apply for jobs, take part in employment schemes and do everything  
11 specified by the ‘work coach’ (DWP 2014). The details of what is required are set out in  
12 writing (in a Claimant Commitment) or may be communicated verbally by the work coach.  
13 Should one not do all of this, sanctions may be used (DWP 2014). Sanctions are applied at  
14 various levels, and last between 4 weeks and three years depending on the level of breach and  
15 whether the breach is new or ongoing (DWP 2014).  
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19 Sanctions are not rare. Wintour (2014) reports that between April 2013 and March 2014  
20 “More than 900,000 jobseeker’s allowance (JSA) claimants have been subject to a benefit  
21 sanction decision”. Changes in 2012 also mean that there is limited time for an individual to  
22 present evidence against a sanction. Such evidence may include providing ‘a good reason’ for  
23 not attending a meeting. This change in timing was implemented “to ensure that claimants  
24 see the consequences of their actions or inactions sooner, the new rules enable DMs  
25 [Decision Makers] to impose sanctions at a time closer to the offence” (DWP 2013).  
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29 Claimants have been sanctioned for: failing to sign on with their work coach even though  
30 they were attending recommended training (Brown, 2013); attending a funeral and so not  
31 signing on (Twigg, 2013); and not looking for work because the individual was waiting for a  
32 secured job to begin (Khan, 2015, in this case the job was with the DWP; for examples of the  
33 various reasons for sanctions, see Work and Pensions Committee, 2015 written submissions,  
34 DWP unspun 2014; Lansley and Mack, 2015: 127). The harshness of these rules and of  
35 sanctions more generally has not gone unnoticed. Webster argues that benefit sanctions  
36 constitute a ‘secret penal system’, one “which is more severe than the mainstream judicial  
37 system, but lacks its safeguards” (2015).  
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41 There are two points to raise here. First, sanctions are clearly a form of punishment. While  
42 they are apparently designed to ‘encourage’ claimants to abide by the conditions set out in  
43 their Claimant Commitment they are clearly penalties for not having done so. Second, it does  
44 not seem to be the case that individuals are actually able to provide information necessary for  
45 a reasonable determination of their case in a timely manner. If claimants are not aware that  
46 they are going to be sanctioned, it is impossible for them to provide an explanation. Indeed,  
47 an often found narrative is that claimants first know of their sanction when they are unable to  
48 access money from a cash machine (e.g. Church Action on Poverty, 2015: 25). In this way,  
49 benefit claimants are subject to treatment inferior to that which prisoners receive under the  
50 SMR.  
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54 In order to identify the situations in which sanctions constitute torture, is important to  
55 examine the consequences of sanctions. Benefit sanctions stop the payment of social welfare.  
56 While individuals should continue to receive housing benefit, they will have no income for  
57 the duration of the sanction. For many in receipt of JSA, it is unlikely they will have savings  
58 or pantries stocked with food. Heating, travel and communication (internet and phone) will  
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also be difficult if not impossible. The lack of money may mean that the ability to search for jobs or make applications (by internet and phone) is limited, thus putting individuals at further risk of sanctions for not meeting the terms of their Claimant Commitments (which they must do, even while sanctioned).<sup>i</sup> Lansley and Mack note

The average duration of the sanction was eight weeks, with two-thirds of respondents left with no income at all after the sanction was imposed, so that those without outside help were effectively destitute, unable to buy food, pay fuel bills or [128] bus fares, or pay for phone calls (2015: 127-8)

Such evidence from individuals is on record. The following is an extract from a written submission to the House of Commons Work and Pensions Committee:

On the first occasion I cancelled a Jobcentre appointment to go to a job interview. It was short notice however I phoned the Jobcentre to inform them and was assured on the phone that it was ok. I was sanctioned two weeks JSA. I appealed this and was found to be in the right and the money was paid to me, which was great, but in the interim I had to go 2 weeks without a penny to my name. I missed other job interviews because I had no money for transport and went without food, electric and heating for some of that time. It was a cruel punishment issued arbitrarily, had a negative impact on my jobseeking and diminished my respect for the benefit system massively (Work and Pensions Committee, 2015; written submission SAN0029).

Another submission to the same Committee is even starker.

I am Gillian Thompson the sister of the late David George Clapson, and submit evidence on his unnecessary and untimely death.

My brother David was found dead in his flat on 20th July 2013, he died alone, penniless and starving he was just 59.

The Coroner's Report stated there was no food his stomach.

His money had been stopped a month before he died for failing to attend an appointment and by the 8<sup>th</sup> July he had just £3.44 in his bank (you need at least £5 to draw money out).

His electric key had run out and could not chill his insulin and there was no food in the flat (Work and Pensions Committee, 2015; written submission SAN0047)

I do not want to suggest that benefit sanctions will always constitute torture. But if (A) a person has no savings/money, (B) has no other means to meet basic needs (e.g. family help) and (C) the sanction is eight weeks or longer, a reasonable case could be made that the sanction constitutes torture. Given what is involved in claiming JSA, these conditions should not be difficult to establish administratively. Further, no sanction should be imposed if an individual is appealing a sanction decision. Together, these requirements simply ensure that benefit claimants are not placed in a worse situation than prisoners.

In relation to the elements of torture specified in section 2, it is clear that someone in government has done something (DWP applying sanctions; elements 1 and 3). It is also clear that benefits sanctions are a punishment (element 2) The feeling of something very very bad is a common-sense presumption from the lack of resources and the conditions (A-C) outlined (elements 1 and 5). Severe lack of financial resources in contemporary Britain will result in hunger, lack of heat and electricity and loss of communication. Under the three conditions (A-C), a sanction of is highly likely to result in a person feeling something very very bad. As shown above, the intention in torture need not be one of causing pain. It need only be an intention to undertake a particular action. The relevant action here is stopping JSA payments, which is clearly intentional (element 1).

1 It is possible to argue that charities and family should step in the case of sanctions. This is  
2 relevant not only to identifying cases of torture, but also in establishing causation. If people  
3 could turn to family, they doubtless will (as testimony indicates, Work and Pensions  
4 Committee, 2015). But this is not always possible. Distance, estrangement and the means of  
5 relatives are all considerations; these could be checked under (B) above. And while charities  
6 provide important protection against the worst effects of poverty, but they cannot completely  
7 address extreme lack. It might also be suggested that such sanctioned individuals could beg  
8 on the streets. This is certainly an option. How this would be possible while continuing to  
9 seek work and thus avoid further sanctions is not clear. In any case, it seems that being able  
10 to seek charitable assistance or raise funds through begging at best turns what would  
11 otherwise be torture into cruel, inhuman or degrading treatment or punishment. Should the  
12 three conditions (A-C) set out above be met, the resulting pain and suffering is both likely to  
13 constitute torture and to be directly related to the sanction. The pain and suffering caused by  
14 the complete lack of resources while having to continue to seek work is foreseeable when the  
15 three conditions have been met and would not have occurred but for the sanction.  
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19 Finally, given the absolute prohibition of torture, it seems reasonable to err on the side of  
20 caution when setting up administrative procedures. If any instance of benefit sanction  
21 constitutes torture, then the safest action (and most compliant with international law) would  
22 be to avoid sanctions altogether. Article 2 (1) of the CAT states:

23 Each State Party shall take effective legislative, administrative, judicial or other  
24 measures to prevent acts of torture in any territory under its jurisdiction.  
25

26 The obligation is preventative, as it is for cruel, inhuman or degrading treatment or  
27 punishment (Article 16(1)). Thus, the Convention obligations are not simply to prosecute  
28 torture but also to prevent both torture and CIDT.  
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## 31 **6. Invisible torture**

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34 I realise that it is difficult to see benefit sanctions as ‘torture’. There are least two reasons for  
35 this. First, torture is not well understood, even in legal domains. Second, we are encouraged  
36 to see JSA claimants as deserving of their punishment and thus not to see their treatment as  
37 torture.  
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40 The CAT defines torture as an act which causes “severe pain or suffering, whether physical  
41 or mental”. Generally, however,

42 ...the only scenario that we have in mind when we speak of torture is that of an evil  
43 state agent (torturer), locking a cuffed suspect in an interrogation room, deep in a dark  
44 basement while a single light is swaying above his head, and subjecting the suspect to  
45 extreme and severe pain and suffering (Saif-Alden Wattad, 2008: 1; see also  
46 Klayman, 1978: 498).  
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49 We also expect there to be visible physical evidence of the torture (Rejali, 2009: 2). But  
50 torture often leaves no physical trace, as Rejali shows in his documentation of the history and  
51 range of ‘clean torture’ methods (2009). Moreover, there are other forms that torture takes.  
52 Schechter argues for the recognition of starvation as torture (2003), Cuniffe (2013) makes  
53 the case that psychological torture is not adequately legally recognised and Luban and Shue  
54 (2011) detail various forms of mental pain and suffering that should also be recognised as  
55 torture. In short, legal scholars argue that the ‘torture’ judicially recognised at present fails to  
56 capture the range of human pain and suffering that international law prohibits. From the very  
57 beginning of the legal prohibition of torture it has been acknowledged that the infliction of  
58 severe physical or mental suffering can take many forms (Klayman, 1978). But political  
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expedience and perhaps the desire for nations not to be seen as torturing their own citizens has polarised our prototypes such that we are more focused on physical pain that leaves visible marks than on the full range of pain and suffering.

Our conception of torture is also tied to our conception of the person being subjected to ‘torture’. That we do not recognise actions as torture which would otherwise satisfy the legal definition of torture is perhaps due to the power of discourse to render some events invisible and some people inconsequential. As Viterbo argues, “State torture is embedded in a certain representational economy” (2014: 290). Thus there is a further strand to consider that brings together dominant discourses around benefit claimants, our individual social position and perhaps our unconscious understanding of how punishing sanctions really are.

Successive governments in the UK have sought to highlight the cost of welfare spending and to focus particularly on so-called ‘scroungers’. This is a discourse with a long history, reaching back to the distinction between the ‘deserving’ and ‘undeserving’ poor and constantly refreshed by both media coverage and government rhetoric (Garthwaite, 2011; Lansley and Mack, 2015, 121ff; Shildrick and MacDonald, 2013). Despite figures showing that nearly half of the welfare spend is to cover pensions for the elderly (e.g. Rogers, 2013), there is a pervasive idea that there is a large group of people taking advantage of the benefits system and making a ‘lifestyle’ choice to remain on benefits rather than work. There is little evidence to support this (Lansley and Mack, 2015: 147-8). Nevertheless, the discourse of the benefit scrounger may work as an ideological veil or filter contributing to a perception of sanctions as ‘fair treatment’.

Everyone ‘knows’ that it is not a good thing to be claiming social welfare payments. Indeed, the demonization of benefits claimants is newly visible in so-called ‘poverty porn’ (see Biressi, 2011; Jensen, 2014; Paterson, Coffey-Glover and Peplow, 2016). This ‘genre’ has been defined as “the media portrayal of the feral and feckless poor as the source of social breakdown” (Squires and Lea, 2013: 12 cited in Paterson, Coffey-Glover and Peplow, 2016: 197). Paterson, Coffey-Glover and Peplow (2016) outline the negative stereotypes that attach to benefit claimants (see also Jensen, 2014: 1.1). They also demonstrate the separation that viewers of poverty porn make between themselves and the people depicted (Paterson, Coffey-Glover and Peplow, 2016). Moreover, as poverty porn focusses on “individual failures and deficiencies” it decontextualizes poverty and erases social and structural causes (Hancock and Mooney, 2013: 111). In this way, poverty porn “performs an ideological function; it generates a new ‘commonsense’ around an unquestionable need for welfare reform; it makes a neoliberal welfare ‘doxa’” (Jensen, 2014: 2.2).

Together with the view that people are only on social welfare because of their own character and lack of initiative, poverty porn serves as a potent warning to the remainder of the population. The portrayal of ‘othered’ individuals is a constant reminder of the life we will be forced to live and the way we will be publicly regarded if we too are found to lack the personal qualities necessary to ‘succeed’ (see Jensen, 2014: 2.7). This is clearly a form of ‘moral tutelage’ that functions as a “warning” (Hancock and Mooney, 2013: 117). Recipients of social welfare are stigmatised for receiving benefits, sanctioned when they do not behave as they are supposed to, and, in ‘poverty porn’ used to send a potent and political message (see Rothenberg, 2003). If we are not good enough, if we do not work hard enough, we too may find ourselves on benefits and subject to the same life and treatment.

## 7. Conclusion

1 The international law definition of ‘torture’ has been clarified by explicating it with Minimal  
2 English. Phrased in this way, it should be easier to recognise acts of torture when they take  
3 place. However, as the case of benefits sanctions show, torture and other actions are always  
4 embedded in a representational and political economy, one which may make it difficult to  
5 recognise human suffering even as we are presented with it and especially if it differs from  
6 prototypical images of torture. Under the three conditions outlined, the removal of someone’s  
7 benefits may constitute torture or at least cruel, inhuman or degrading treatment and  
8 punishment as defined in international law. It is intentional, it results in something very very  
9 bad happening to a person’s mind and body and it is done by the state. We do not see it as  
10 torture, however, because our prototypical images of torture do not admit the kinds of pain  
11 that benefits sanctions inflict and because we have been primed to see individuals on welfare  
12 as deserving of their marginalised state.  
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<sup>i</sup> It is possible to apply for hardship funds (DWP 2014). The amount is 60% of JSA and unless a person or their dependents are vulnerable, there is a two week waiting period (Money Advice Service, 2015). A person only qualifies for hardship payments if all their JSA has been cut and they can demonstrate it is impossible to get money from elsewhere or pay for essentials (Money Advice Service, 2015).